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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-191614

DATE: April 21, 1978

MATTER OF: M & S Products Corporation

DIGEST:

Question of whether bidder is manufacturer or regular dealer under Walsh-Healey Act is for determination by contracting agency subject to review by Secretary of Labor. If bidder is small business concern and contracting officer has determined that it is not a manufacturer or regular dealer, matter must be referred to SBA for review under section 501 of P.L. 95-89, 91 Stat. 553, 562. SBA may either certify small business to be eligible or forward matter to Secretary of Labor for final disposition. Thus, GAO will not consider such matters.

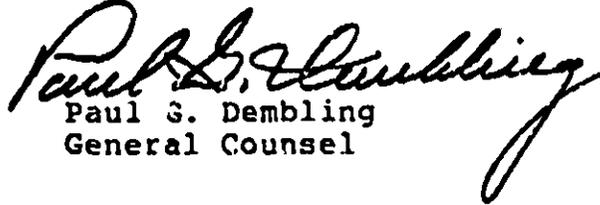
On April 4, 1978, M & S Products Corporation protested the proposed award of a contract to Kessel Kitchen Equipment Company under invitation for bids No. DLA400-73-B-1462 issued by the Defense General Supply Center, Richmond, Virginia. The protester contends that Kessel Kitchen Equipment Company is ineligible for award because it is not a manufacturer or regular dealer as required under the Walsh-Healey Act.

The question of whether a bidder is a manufacturer or regular dealer is for consideration under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1970). The responsibility for such determination rests in the first instance with the contracting agency and is subject to final review by the Secretary of Labor. In the event that the bidder is a small business concern and the contracting officer has determined it to be ineligible because it is not a manufacturer or regular dealer under the Walsh-Healey Act, section 501 of P.L. 95-89, 91 Stat. 553, 562, amending section 8(b) of the Small Business Act of 1958, requires that the matter be referred to the Small Business Administration

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for review. The Small Business Administration may either certify the small business concern to be eligible or forward the matter to the Secretary of Labor for final disposition. Thus, our Office does not review determinations of whether a particular firm is a regular dealer or manufacturer within the purview of the Walsh-Healey Act and related implementing regulations. Imperial Products Company, B-191353, April 5, 1978.

Accordingly, we decline to consider the protest.


Paul G. Dembling
General Counsel